IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Criminal Appeal No. 15-DB of 2000

Dated of Decision: 02.02.2009

1. Bhup Singh son of Rattan Singh aged 31 years, driver, resident of Village Naya Gaon.

2. Omeshwar son of Rattan Singh aged 36 years, Agriculturist, resident of Village Naya Gaon.

3. Mahender son of Rattan Singh, aged 50 years, resident of Village Naya Gaon.

... Appellants

Versus

State of Haryana.

...Respondent

CORAM: HON'BLE MR. JUSTICE K.S. GAREWAL
HON'BLE MR. JUSTICE SHAM SUNDER

Present: Mr. J.S. Bedi, Advocate,
for the appellants.

Mr. H.S. Sran, Additional Advocate General, Haryana,
for the respondent – State.

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SHAM SUNDER, J.

This appeal is directed against the judgment of conviction dated 01.12.1999, and the order of sentence dated 03.12.1999, rendered

by the Court of Additional Sessions Judge, Jhajjar, vide which, it convicted the accused (now appellants), for the offence, punishable under Section 302 read with Section 34 of the Indian Penal Code, and sentenced them, to undergo imprisonment for life each, and to pay a fine of Rs 2,000/- each. In default of payment of fine, to undergo further imprisonment for a period of six months each.

2. Shorn of unnecessary details, the case of the prosecution proceeded, in the manner, that on 26.02.1996, at about 8.00 A.M., complainant Satpal, alongwith his father Tek Chand, was preparing ridge (dol) of their field, when Ved Pal, his brother arrived, in order to help them. Ved Pal, was present, near the ridge of the field of Mahender, accused. At that time, all the three accused namely Mahender, Bhup Singh and Omeshwar, sons of Rattan Singh, emerged. They were carrying a spear (ballam) each. They raised an exhortation, that they would teach them a lesson for preparing ridge. When Ved Pal, tried to stop the accused, Bhup Singh, accused, gave a spear (ballam) blow which hit his chest, whereas Omeshwar, accused, gave a spear (ballam) blow, which hit his left hand. Ved Pal, fell on the ground, in the onion field of Mahender, accused. On hearing alarm, raised by the complainant and his father, all the three accused fled with their weapons. Ved Pal, succumbed to his injuries, sustained by him, at the hands of the accused.

3. Satpal, left his father, Tek Chand, to guard the dead-body of Ved Pal, and proceeded towards the Police Station, to lodge a report,

when the Police party, headed by Chand Mohammad, Assistant Sub Inspector, met him, at Jhajjar turning, Bahadurgarh. Satpal, made a statement, before Chand Mohammad, Assistant Sub Inspector, narrating the aforesaid facts, which was recorded by him. He sent the statement of Satpal to the Police Station, on the basis whereof, the First Information Report, was registered. Thereafter, Chand Mohammad, Assistant Sub Inspector, alongwith Satpal, went to the spot and inspected the same. He lifted from the spot, blood stained earth alongwith the chappals of the deceased. Inquest report of the dead-body was prepared. The dead-body was sent for post-mortem examination. The accused were arrested on 27.02.1996. They were interrogated, upon which, they made disclosure statements, in pursuance whereof, they got recovered a ballam (spear) each. After the completion of investigation, the accused were challaned.

4. On their appearance, in the Court of the Committing Magistrate, the accused were supplied the copies of documents, relied upon by the prosecution. After the case was received by commitment, charge under Section 302 of the Indian Penal Code, against Bhup Singh, accused, and under Section 302 read with Section 34 of the Indian Penal Code, against Omeshwar and Mahender, accused, was framed, to which they pleaded not guilty, and claimed judicial trial.

5. The prosecution, in support of its case, examined Raj Pal, Patwari (PW1), who prepared aksh-shajra, PA, after visiting the spot, Assistant Sub Inspector Rambir Singh (PW2), Ranbir Singh, UGC

(PW3), Same Singh, Constable (PW4), Hargian Singh, Constable (PW5), Bharat Singh, Head Constable (PW6), Satbir Singh, Retired Inspector (PW7), Mange Ram, Inspector (PW8), Satpal, an eye-witness (PW9), Tek Chand, another eye-witness (PW10), Sukhpal Singh, Constable (PW11), Dr. R.K. Chaudhary, Senior Medical Officer, Civil Hospital, Rohtak (PW12), who conducted the post-mortem examination, on the dead-body of Ved Pal, deceased, Chand Mohammad, Assistant Sub Inspector, Investigating Officer (PW13) and Charan Singh (PW14), who identified the dead-body of Ved Pal, deceased. Thereafter, the Public Prosecutor, for the State, closed the prosecution evidence.

6. The statements of the accused, under Section 313 of the Code of Criminal Procedure, were recorded. They were put all the incriminating circumstances, appearing against them, in the prosecution evidence. They pleaded false implication. Bhup Singh, accused, in his statement, under Section 313 of the Code of Criminal Procedure, took up the following plea:-

> "I am innocent. In fact, there is no land cultivated by Tek Chand and whole of the land is being cultivated by us. My uncle Balwant is residing with us and his share of land is also being cultivated by my father for which Tek Chand and his family members were having grudge against us. In fact, the deceased Ved Pal was vagabond type and there was complaint against him in the village that he was in the habit of having bad eyes & teasing the girls. He was murdered by some unknown person in the early hours of the morning or in the night between

> 25/26.2.96, and his dead-body was thrown in our fields and due to this I alongwith my brothers have been falsely implicated in this case. In fact, Mohinder is living separately at the outskirts of the village and no agricultural land has fallen to his share."

7. Omeshwar, accused, also adopted the same plea, as was taken up by Bhup Singh, in his statement, under Section 313 of the Code of Criminal Procedure.

8. Mahender, accused, in his statement, under Section 313 of the Code of Criminal Procedure, stated that, no agricultural land had come to his share. It was further stated by him, that he was a retired Subedar of Military, residing separately, from his other family members, in a house, constructed by him, on the outskirts of village, having a separate ration-card and paying separate chulha-tax. It was further stated by him, that he was falsely implicated, in the instant case. It was further stated by him that, infact, the dead-body of Ved Pal was found lying in the fields of his father, in the early hours, and later on, he and his brothers were involved, in this case. The accused, however, did not lead any evidence, in defence.

9. After hearing the Counsel for the parties, and, on going through the evidence, on record, the trial Court, convicted and sentenced the accused, as stated above.

10. Feeling aggrieved, the instant appeal, was filed by the appellants.

11. We have heard the Counsel for the parties, and have gone

through the evidence and record of the case, carefully.

12. The Counsel for the appellants, submitted that, it was a blind murder, whereas Satpal and Tek Chand, were introduced, as eye-witnesses, later on. In the alternative, he submitted that the alleged occurrence, took place, in the land, in possession of the assailants, and, at the most, it could be said to be a case of exceeding the right of private defence of their property. It was further submitted by him that injury No. 2, on the person of the deceased, was not caused, at the time the alleged occurrence took place. He further submitted that two spears, which were sent to the Forensic Science Laboratory, were not found stained with blood. He further submitted that there was no common intention of the accused, to allegedly cause injuries, on the person of Ved Pal, resulting into his death. He also submitted that, no over-tact was attributed to Mahender, accused. He further submitted that, all the accused were falsely implicated.

13. On the other hand, the Counsel for the respondent submitted that, all the accused were armed with spears (ballams). He further submitted that, two of them caused injuries, on the person of the deceased, resulting into his death, and Mahender, accused, raised an exhortation. He further submitted that the accused were having a common intention, in furtherance whereof, the crime was committed. He further submitted that the trial Court was right, in recording conviction, and awarding sentence. He also submitted that, no plea, with regard to causing injuries, on the person of the deceased, in

private defence of the property, was ever taken by the accused, either during the course of the cross-examination of the prosecution witnesses, or in their statements, under Section 313 of the Code of Criminal Procedure, nor any evidence, in that regard was produced, and at this stage, they could raise the same. He also submitted that, no such, plea is also made out, from the evidence produced by the prosecution.

14. The prosecution case was unfolded by Satpal, complainant-cum-eye-witness. According to him, on 26.02.1996, at about 8.00 A.M., he and his father Tek Chand, were preparing a ridge (dol), as the same was cut a day earlier. His deposition is further to the effect that Ved Pal, deceased, also reached the fields. He further deposed that Bhup Singh, Omeshwar and Mahender, accused, armed with spear (ballam) each, were following his brother Ved Pal. They raised exhortation, saying Ved Pal, that he should stop, as they would teach them a lesson, for preparing the ridge (dol). He further deposed that Bhup Singh, accused, then gave a blow with spear (ballam), on the chest of Ved Pal, when he came forward to stop him and his co-accused from entering into quarrel. It was further stated by him, that Omeshwar, accused, gave a spear blow, on the left fore-arm of Ved Pal. Thereafter, Ved Pal, fell down and died. He further stated that they then raised alarm of 'killed killed'. It was further stated by him that thereafter, the accused fled from the spot. The statement of Satpal, PW9, with regard to the participation of Bhup Singh, accused, in the commission of crime, was duly corroborated by Tek Chand, PW10, another eye-

witness. Their presence, in their fields, at the time of occurrence was most probable and natural. Further corroboration to the ocular evidence, was provided, by Dr. R.K. Chaudhary, Senior Medical Officer, Civil Hospital, Rohtak, PW12, who conducted the post-mortem examination, on the dead-body of Ved Pal, deceased, aged about 17 years and found the following injuries, on his person:-

i. There was obliquely placed elliptical wound over right side chest 4.5 cm x 1.5 cm in size, 5 cm below right sterno-clavicular joint and 7 cm left to right nipple. Margins of wound were sharply cut. Upper edge was wide and slightly irregular while lower edge was sharply cut and clean.

ii. 5 cm x 0.75cm size elliptical sharp wound over middle of back of left fore-arm. It was fat deep. Lateral angle was sharply cut while medial angle was having two extensions, in the dermis. Minimal echymosis was present.

On dissection of chest, there was a track going medially downward and backward cutting lower border of third rib and whole of fourth rib of right side, just right to the sternum, then cutting right plural sac near mediasternum, causing a rent in right auricle of heart, then going through pulmonary artery, then posterio medial part of middle lobe of left lung. The length of track was 16 cm long. There was massive haemotorax of both sides and haemopericardium with clotted blood in mediasternum.

The doctor opined that the cause of death of the deceased was shock due to extensive thoracic injuries, ante-mortem in nature, and sufficient to cause death, in the ordinary course of nature. It was stated by Dr. R.K. Chaudhary, that injury No.1, on the person of the deceased, could

be caused, by any sharp penetrating weapon. It was further stated by him, that injury No. 2, was only subcutaneous fat deep and hence, it was superficial. According to the opinion of the doctor, injury No. 2, on the person of the deceased, could have occurred, at any time, on the night of 25.02.1996. This injury was attributed to Omeshwar, accused. The occurrence, in this case, took place on 26.02.1996, at about 8.00 A.M., and, as such, injury No. 2, on the person of the deceased could not be said to have been caused, at that time. From the evidence, produced by the prosecution, and discussed above, it was proved beyond doubt that Bhup Singh, accused, caused injury No. 1, on the chest of the deceased, which proved fatal, resulting into his death. Thus, the participation of Bhup Singh, accused, in the commission of crime, stood proved, beyond a reasonable doubt. Satpal, PW9, and Tek Chand, PW10, were thoroughly cross-examined, but they stood the test of touchstone of all probabilities, during the course of their cross-examination, in so far as, the participation of Bhup Singh, in the commission of crime was concerned. Their evidence is reliable and inspires confidence, in the mind of the Court. The participation of Omeshwar and Mahender, accused, in the commission of crime, was highly doubtful, as would be discussed, hereinafter. The trial Court, was, thus, right in holding that Bhup Singh, accused, caused injury No. 1, on the person of Ved Pal, deceased, resulting into his death. The finding of the trial Court, with regard to the participation of Bhup Singh, in the commission of crime, being based, on the correct

appreciation of evidence and law on the point, deserves to be upheld. Therefore, the contention of the Counsel for the appellants, that it was a blind-murder, being without merit, must fail, and the same stands rejected.

15. Now coming to the factum, as to whether, injury No. 1, on the person of the deceased, was caused, by Bhup Singh, in private defence of the property, it may be stated here, that the same is not proved from the evidence, on record, as would be discussed, hereinafter. No plea, during the course of the cross-examination of the prosecution witnesses, was taken by the accused that since Ved Pal, deceased, had criminally trespassed into their land, was damaging the crop of onions, and with a view to protect their property, they caused injuries, on the person of Ved Pal, deceased. Even, in their statements, under Section 313 of the Code of Criminal Procedure, no such, plea was taken up by the accused. No doubt, if it is made out, from the evidence produced, that the injuries were caused, on the person of Ved Pal, in private defence of the property, by the accused, then that can be taken into consideration. However, from the evidence produced, on record, such a plea of private defence of property, is not substantiated. Even from the evidence, on record, it was not proved that the occurrence took place, in the fields of the accused, where the onion crop was in existence. It is evident from exhibit PN, the site-plan, that on the southern side, adjoining the fields of the accused, there is metalled water gutter (khal). Adjoining this water channel, there is

unmetalled gutter (khal). Adjoining the unmetalled gutter (khal) on the southern side there is the field of Tek Chand (PW10). It was only adjoining the fields of the accused that the ridge was being prepared, by Satpal, Tek Chand and Ved Pal. On the western side of the fields of the accused, there is un-metalled passage of 2 karams. Mark A, is the point, where the dead-body of Ved Pal, was found lying. It is the onion field of the accused. Mark B, in the site-plan, is the place, where the nylon chhapal of right foot of Ved Pal, deceased, was found lying. It is also in the onion field of the accused. Mark C, is the place, where the nylon chhapal of the left foot of the deceased was found lying. It is also in the onion field of the accused. All these points, just adjoin the metalled water gutter (khal). It appears that the occurrence took place just near the land of the accused, as adjoining that, there is land of Tek Chand, PW10, and when the injuries were being caused, on the person of Ved Pal, he with a view to save himself, must have run, as a result whereof, he fell down, in the field of the accused, at mark A and that was why, the chhapals being worn, by him, were also found lying there. The mere fact that the dead-body of the deceased was lying, adjoining the pucca water channel, in the field of the accused, did not mean, that the occurrence took place there. Even otherwise, there is no evidence, on record, that Ved Pal, had criminally trespassed, into the onion field of the accused, nor such a plea was taken up, by the accused during the course of the trial of the case, nor any evidence, in that regard was produced. Even no evidence was produced that Ved Pal after allegedly

trespassing into the onion fields of the accused, was damaging the crop and on account of that reason, with a view to protect their property, they caused injuries, on his person. Even, Tek Chand, Ved Pal and his brother Satpal, were not having any weapons of offence or defence with them, at the time of occurrence. They were only in possession of agriculture implements, which are carried by every agriculturist, whenever he goes to his fields. Under these circumstances, the alternative plea, taken up by the Counsel for the appellants, that injuries were caused, on the person of the deceased, in private defence of the property of the accused, being without merit, must fail,and the same stands rejected.

16. Now coming to the role of Omeshwar and Mahender, accused, in the alleged commission of crime, it may be stated here, that the same was not proved from the evidence, on record, as would be discussed, hereinafter. Omeshwar, was attributed one injury, on the left fore-arm of the deceased. However, as stated above, the doctor, during the course of his cross-examination, in clear-cut terms, stated that injury No. 2, on the person of the deceased, could be caused, at any time, on the night of 25.02.1996. It means that, such an injury, on the person of the deceased, was not caused, on 26.02.1996, at 8.00 A.M., when the occurrence took place. Mahender, accused, was only attributed an exhortation. He did not commit any over-tact, though he was allegedly having a spear (ballam), in his hand. He did not allegedly cause any injury, on the person of the deceased, nor did he catch hold

of him. It appears that, with a view to exaggerate the number of accused, Omeshwar and Mahender, who are real brothers of Bhup Singh, their co-accused, were falsely implicated, in this case. In ***Jainul Haque Vs. State of Bihar, AIR, 1974 (SC) 45,*** it was held that the evidence of exhortation is, in the very nature of things, a weak piece of evidence. There is quite often a tendency to implicate some person, in addition to the actual assailant, to assault the victim. Unless, the evidence, in this respect, be clear, cogent and reliable, no conviction for abetment can be recorded against the person, alleged to have exhorted the actual assailant. In ***Tarlok Singh Vs. State of Punjab, 1974, PLR 84 and Kashmira Singh Vs. State of M.P. AIR, 1952, (SC), 159,*** the principle of law, laid down, was to the effect, that the tendency to include the innocent, with the guilty is peculiarly present, in India, and it is very difficult, for the Court, to guard against this danger. The only real safeguard, against the risk of condemning the innocent, with the guilty, lies in insisting on independent evidence, which in some measures, implicates such accused. The principle of law, laid down, in the aforesaid cases, is fully applicable, to the facts of the instant case. In the instant case, Satpal, PW9, is the son and Tek Chand, PW10, is the father. Their evidence is not corroborated through the evidence of any other independent witness. The evidence with regard to exhortation is not reliable and, thus, does not inspire confidence, in the mind of the Court. Under these circumstances, participation of Omeshwar and Mahender, accused, in the commission of crime, being highly doubtful,

out of abundant caution, they are required to be given the benefit of doubt.

17. Since, it has been held that Omeshwar and Mahender are required to be given the benefit of doubt, the conviction of Bhup Singh is required to be converted into one under Section 302 of the Indian Penal Code, instead of 302 read with Section 34 of the Indian Penal Code. Even charge against Bhup Singh was framed under Section 302 of the Indian Penal Code. There will be neither any failure of justice nor any prejudice will be caused to Bhup Singh, appellant, on account of adoption of this course.

18. No other, point was urged, by the Counsel for the parties.

19. For the reasons, recorded above, Criminal Appeal No. 15-DB of 2000, filed by Bhup Singh son of Rattan Singh, appellant, is dismissed with the modification, as under. The judgement of conviction, under Section 302 of the Indian Penal Code and the order of substantive sentence qua Bhup Singh, are upheld, whereas, the fine is enhanced to rupees two lacs, from rupees two thousand, and in default of payment of fine, Bhup Singh, appellant, shall undergo rigorous imprisonment for two years, instead of six months. On recovery/deposit of the amount fine, the same shall be paid to the legal heirs of the deceased, if more than one, in equal shares as compensation. If Bhup Singh, appellant, is on bail, his bail bonds shall stand cancelled.

20. Criminal Appeal No. 15-DB of 2000, filed by Omeshwar

and Mahender, is accepted. The judgement of conviction and the order of sentence, qua them, are set-aside. They shall stand acquitted of the charge framed against them. If they, are on bail, they shall stand discharged of the bail bonds. If they are in custody, they shall be set at liberty, at once, if not required, in any other case.

21. The Chief Judicial Magistrate, shall comply with the judgment promptly, in accordance with the provisions of law.

(K.S. GAREWAL)
JUDGE

(SHAM SUNDER)
JUDGE

02.02.2009
Amodh